

## **TRIALS SKILLS AND THEORY - SPRING 2000**

Lectures	5:00 - 5:45	Tuesdays	Eighth Floor Library
Practical	6:00 - 7:00	Tuesdays	Eighth Floor Library
Facilitator	Jeff Larrimore		
Text	Assorted selections from CMU Trial Manual - prepared by Cynthia Bolden.		

**Purpose:** To refresh and instill basic knowledge of trial skills, theory, and techniques applicable to daily misdemeanor practice.

**Goals:**

- To provide new CMU attorneys increased confidence in case analysis, trial preparation and trial theory.
- To provide attorneys a feedback oriented forum for developing ideas and "rehearsing" critical trial issues in cases scheduled for trial before stepping into actual courtroom.
- To give attorneys an expanded trial support network by exposure to guest speakers sharing their own successes and failures.

**Format:** **Lectures** in case development and trial theory, reading a case file, developing motions in limine, applying evidence code to specific cases, as well as trial basics from opening statement through closing argument.

Read assigned text before class.

Attend all sessions. Each week bring one active case file that is scheduled for trial.

**Practical** - Following guest lectures, each week participants will carry out the exercises noted in the schedule.

### **Grading**

**and Examination:** Although this series will not be graded, it goes without saying that a trial lawyers professional reputation is on the line each time he or she steps into the courtroom. It is hoped that this series will provide a rock solid foundation in skills which can not only win or lose cases, but also give new CMU attorneys the confidence and courage to answer - and be - "ready" at trial call.

It must also be noted that all new CMU attorneys will participate in a timed "mock trial" which will be overseen by CMU attorneys and supervisors. This "mock trial" is graded both for employee evaluations as well as to give new lawyers a baseline upon which to evaluate their own professional progress.

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Date	Lecture number	Subject	Lecturer(s)
March 21	1	Understanding the file, case analysis, motions in limine, trial theory and brainstorming.	Class of 99
March 28	2	Creating a compelling Opening Statement	Jeff Larrimore
April 4	3	Direct Examination/Foundations	Ron Vanesian
April 11	4	Cross Examination/Witness Control	Dan Segura
April 17*	5	Impeachment/Witness Credibility	Gary Gibson
April 25	6	Closing Argument	David Lamb

\* Please note that this session meets on a Monday evening.

### **WEEK ONE**

### **What's the case about? Trial theory, analysis, motions .**

#### **Covered Topics:**

Case evaluation - calculating exposure, factoring internal and external violations, and deciphering dockets  
 Felony probation and parole holds - management at arraignment, TSD and trial.  
 Trial theory - "take the sting out" vs. Sponsorship theory - (or "the heck with their french fries, let's sell them on ours!")  
 Demonstrative Exhibits - what, how and where  
 Brainstorming - use those around you until they beg you to stop  
 Investigation Requests - the good, bad and ugly  
 Motions in Limine

#### **Reading:**

Selections from Sponsorship Strategy - Evidentiary Tactics for Winning Jury Trials (1990) Klonoff and Colby pp. 3-9, 17-45.

#### **Activity:**

Participants will bring one case file set for jury trial and share with peers/facilitator(s). Group will help each other with theme development, image goals, strengths and weaknesses.

#### **Assignment:**

Prepare 3-10 minute opening statement for next session from case file.

## **WEEK TWO**

### **Creating a Compelling Opening Statement**

- Covered Topics: Purpose and scope of open Story Telling - it's not a road map, it's not a puzzle.  
Arouse interest with Tone and Pitch, and purposeful movement  
Artful argument such that the objector becomes buffoon  
Building rapport - eye contact  
Primacy/Recency  
"Formula" for an effective open - digging details from limited discovery
- Reading: "Opening Statements" by James E. McElhaney, ABA Journal Jan. 1995, pp.73-74 from CMU Manual  
Selections from Sponsorship Strategy - Evidentiary Tactics for Winning Jury Trials (1990) Klonoff and Colby pp. 163-173.
- Activity: Participants will present 3-10 minute opens. Peers and facilitator(s) will provide feedback focusing on clarity, theme generation/presentation, and overall impressions.
- Assignment: Meet with assigned partner. Prepare a 3-10 minute direct examination of potential defense or prosecution witness. If applicable to case, attempt to introduce at least one item into evidence through this witness.

## **WEEK THREE**

### **Direct Examination/Foundations** - rarely use it so don't lose it.

- Covered Topics: Who, what, when, where, how - avoiding the "lazy" leading questions  
Let the witness tell the tale - positioning self so that it's easy for witness to connect with jury  
Keep it tight and coherent - leading questions permitted for foundation  
Refreshing recollection - help your witness so that they can help you (remember; "anything" can be used to refresh)  
Protecting your witness  
Use of demonstrative exhibits in direct.  
Avoiding verbal crutches ("and", "uh huh" etc.)  
Sharp, crisp, and polished = points with judge, opponent and jury  
Bottom line - purely mechanical, but you don't have to look like a robot
- Reading: As needed, California Evidentiary Foundations - Imwinkelried, Wydick, Hogan. Available on 8th Floor Library.
- Activity: Participants will present assigned direct. Each examination should hit one or two image goals as well as lay foundation for one piece of evidence (if case applicable). Peers and facilitator(s) are

encouraged to make appropriate objections, and will provide feedback focusing on whether they - as listener- found the exam hit goals, was interesting, etc., as well as provide overall impressions.

Assignment: Prepare a cross-examination of any witness anticipated in your case. This should be a witness who has a recorded statement in case file.

#### **WEEK FOUR**

#### **Cross-Examination/Witness Control**

Covered Topics: Purpose and theory of cross-examination - “the most powerful machine for generating the truth ever devised by man!”  
The three rules -  
    (1) Always leading  
    (2) One new fact per question  
    (3) General to specific  
“First, do no harm”  
The “so” question - save it for close; re-training our minds  
“Ask no questions to which you do not know the answer”/exceptions  
Witness control - techniques/finding what works  
Tone of cross-exam - remember your audience  
Organization - image goals

Reading: Samurai Cross Examination - Larry Pozner and Roger Dodd, Adopted from their book Cross Examination: Science and Techniques

Activity: Participants will cross-examine a peer playing a recorded statement witness role. During this exercise the witness is encouraged to be uncooperative. Peers and facilitator(s) are encouraged to make appropriate objections. Following this exam, participants will share their image goals with peer group and will accept feedback on whether listeners found the exam hit those desired goals, as well as provide overall impressions.

Assignment: Watch the Juanita Brooks “Cross Examination” 9/22/99 training video. Available from Christine Adaska X4864.

## **WEEK FIVE**

## **Attacking Credibility/Impeachment**

- Covered Topics: The Evidence Code is Your Friend  
Credit, Confirm, Confront - doing it with style  
Injecting visual images into crediting questions  
Identifying the types of prior statements  
Impeachment by omission - the “suddenly remembering” witness.  
Remember: “don’t walk and talk!”  
“Indirect impeachment” thru refreshed recollection (3<sup>rd</sup> party statements)
- Reading: Simons on California Evidence by Judge Mark B. Simons, pp 3-29 to 3-50, California Evidence Code Sections: 780/782/785/786/787/788/790/791/769/770/1236/1236
- Activity: Participants will do a five-ten minute impeachment exercise designed to join mechanical impeachment techniques with personal sense of style and drama. Regarding the “remembering” witness impeachment, the advocate can get sense of control and understand how that control can be imparted throughout cross.
- Assignment: Prepare 5- 10 minute closing argument for next session from case file. This should include either (1) a jury instruction; (2) burden of proof; or (3) presumption of innocence.

## **WEEK SIX**

## **Closing Argument**

- Covered Topics: Considering exhibits - KISS  
Ringing theme  
Using imagination  
Trial as theatre  
Understanding the power of your voice- rising inflection/comfort with silence etc.  
Wordsmithing - preparing key lines with care  
Using rhetorical questions  
Avoiding legalese - let the prosecutor drone  
Using the prosecutors evidence
- Reading: Selections from Sponsorship Strategy - Evidentiary Tactics for Winning Jury Trials (1990) Klonoff and Colby pp. 245-287.
- Activity: Participants will present prepared closing argument.